SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

October Term, 1974

No. 74-835

WILLIAM W. NIENDORFF,
*Petitioner,*

v.

M. J. R. WILLIAMS, King County Treasurer,
and KING COUNTY,
*Respondents,*

## PETITION FOR A WRIT OF CERTIORARI TO DIVISION I OF THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WILLIAM W. NIENDORFF,
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M. J. R. WILLIAMS, King County Treasurer,
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*Respondents,*

---

## PETITION FOR A WRIT OF CERTIORARI TO DIVISION I OF THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, William W. Niendorff, hereby petitions for a writ of certiorari to review the decision of Division I of the Court of Appeals of the State of Washington allowing M.J.R. Williams, King County Treasurer, an authorized agent of the State of Washington, and King County, a political subdivision of the State of Washington, to make a Thing other than gold and silver Coin a Tender in Payment of the County's Debt to Petitioner for services performed for the State as a juror in the Superior Court of the State of Washington for King County.

## OPINIONS BELOW

The Memorandum Decision and Order of the Superior Court of the State of Washington for King County are appended hereto as Appendix A and Appendix B, respectively.

The Opinion and Order of Division I of the Court of Appeals of the State of Washington are appended hereto as Appendix C. There was no separate order issued by the Court of Appeals, the Order of Affirmance being contained within the Opinion.

Neither of the Opinions in this case have been reported.

## JURISDICTION

The Order sought to be reviewed was made and entered on May 13, 1974. An Order denying a timely petition for rehearing was made and entered on July 22, 1974, and is appended hereto as Appendix D. An Order denying a timely petition for review by the Washington State Supreme Court was made and entered on October 11, 1974, and is appended hereto as Appendix E. The Opinion of the Court of Appeals became the final judgment in this case by order of the Remittitur of that Court dated October 21, 1974, appended hereto as Appendix F. The Statutory provision believed to confer on this Court jurisdiction to review the judgment in question is 28 U.S.C. § 1257 (3).

## QUESTIONS PRESENTED FOR REVIEW

1. Can the United States Congress lawfully authorize or compel a State, or any of its political subdivisions or authorized agents, to make a Thing other than gold and silver Coin a Tender in Payment of Debts incurred for

services performed, without violating the absolute prohibitions of the First Clause of Article I, Section 10, of the United States Constitution?

2. Is 31 U.S.C. § 392 constitutional, when applied to the Debts of a State or its political subdivisions incurred for services performed?

3. Are the restrictions of the First Clause of Article I, Section 10, of the United States Constitution, binding upon all the political subdivisions and all the authorized agents of a State?

4. Can Congress, or the President, consistent with the Tender provisions of Article I, Section 10, of the United States Constitution, lawfully prohibit a citizen from owning gold and silver Coin or any of its component parts?[1]

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:

Article I, Section 10, Clause 1:

No State shall

[1] enter into any Treaty, Alliance, or Confederation;

[2] grant Letters of Marque and Reprisal;

[3] coin Money;

[4] emit Bills of Credit;

[5] make any Thing but gold and silver Coin a Tender in Payment of Debts;

[6] pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

1. This question, raised by Respondents in the Trial Court as a defense, was not commented upon by either the Trial Court or the Appellate Court in their Opinion. The issue may very well be moot by the time this Court hears the case. In the event the issue is not moot, or is not moot for this case, Petitioner will raise the issue.

Article I, Section 10, Clause 2:

No State shall, without the Consent of the Congress . . .

Article I, Section 10, Clause 3:

No State shall, without the Consent of Congress . . .

## STATUTORY PROVISION INVOLVED

United States Code, Title 31:

Section 392. Legal Tender

> All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.

## STATEMENT UNDER RULE 33(2)(b)

Since the proceeding draws into question the constitutionality of the Act of July 23, 1965, Public Law 89-81, Title I, § 102, 79 Stat. 255, 31 U.S.C. § 392, an Act of Congress affecting the public interest, and neither the Untied States nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. §2403 may be applicable.

## STATEMENT OF THE CASE

Petitioner is the holder of King County Warrant No. 0011062 in the amount of $186.00, payable by the King County Treasurer, issued to Petitioner for services rendered as a juror in the Suprior Court of the State of Washington for King County, during April 1972.

Petitioner presented the Warrant to the King County Treasurer for redemption and demanded payment in gold

and silver Coin, pursuant to Article I, Section 10, of the United States Constitution. The Treasurer refused payment in the form demanded. Petitioner then filed suit against the King County Treasurer and King County, Washington, seeking declaratory relief and judgment entitling him to payment in gold and silver Coin, pursuant to Article I, Section 10, of the United States Constitution.

After answer, each Party filed a motion for Summary Judgment. The Superior Court granted Defendants' motion and dismissed Petitioner's complaint.

Petitioner appealed to the Washington State Supreme Court which, denying Petitioner's motion to maintain jurisdiction, transferred the case for determination to Division I of the Court of Appeals of the State of Washington.

The Court of Appeals affirmed the decision of the Superior Court, and denied Petitioner's timely motion for rehearing.

The Supreme Court of the State of Washington on October 11, 1974 denied a timely petition to review the decision of the Court of Appeals.

The Federal question was first raised in the trial court by Petitioner's Complaint, more specifically paragraphs 5 and 6 as follows:

> 5. That on May 8, 1972 Plaintiff presented said Warrant No. 0011062 to M.J.R. Williams, King County Treasurer, Defendant herein, and demanded payment as follows: "Pursuant to Article I, Section 10, of the United States Constitution, I request payment of Warrant No. 0011062, dated 04-28-72, in gold and silver Coin.", which demand was wholly refused and denied by said Defendant Williams

while acting as and in the capacity of Treasurer of King County.

6. That King County, Washington is liable along with Defendant Williams to pay said Warrant in gold and silver Coin, the grain content of pure gold and silver which is set by law by the United States Congress all pursuant to Article One Section 8, Clause 5 and Article One Section 10 of the Constitution of the United States.

The Federal question was further raised in Petitioner's Motion for Summary Judgment. Following dismissal of Petitioner's complaint by the trial court, the Federal question was again raised in Petitioner's Assignment of Error to the Court of Appeals, more specifically:

> The Superior Court erred when it issued its final order (Tr. 4), granting Defendants' Motion for Summary Judgment and denying Plaintiff's Motion for Summary Judgment. It is Appellant's position that this order, based on a holding that 31 U.S.C. Sec. 392 is constitutional (St. 13), allowing the agents of the State of Washington to make a Thing other than gold and silver Coin a Tender in Payment of the County's Debt to Appellant, is in violation of Article I Section 10 Clause 1 of the United States Constitution.

Both the Superior Court, in its Memorandum Decision, and the Court of Appeals, in its Opinion, addressed themselves specifically to the Federal issue raised. There is no issue of fact whatsoever in dispute in this case, and no other issue of law than the Federal issue of the obligation of a State, or its authorized agents and political subdivisions, under Article I, Section 10, of the United States Constitution, to Tender gold and silver Coin in Payment of their Debts.

## REASONS FOR GRANTING THE WRIT

### 1. There Exists a Basic Conflict Between the Decisions of This Court Concerning the Power of Congress Over the Currency, and the Decisions of This Court Concerning the Nature of the Restrictions in Article I, Section 10, Which Includes the Restriction on Tender

Article I, Section 8, Clause 5, gives to Congress the power "To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; . . ."

Article I, Section 8, Clause 6, giving Congress the power "To provide for the Punishment of counterfeiting the Securities and current Coin of the United States" strongly implies that only Coin, and not Securities, can be made Tender.

This implication, as far as it concerns the obligations of a State, its Agents, and Political Subdivisions, for services performed, is made certain by the absolute nature of the prohibitions in the First Clause of Article I, Section 10, "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts".

In the original draft of the Constitution there were two classes of restrictions upon the States: absolute restrictions, contained in the original Article 12, and conditional restrictions, contained in the original Article 13. During the debate in the Constitutional Convention, on the 28th day of August, 1787, the Tender restriction here in question was moved by unanimous vote from the 13th article of conditional restrictions to the 12th article of absolute restrictions. The minutes of the Convention, *Documents Illustrative of the Formation of the Union of the Ameri-*

*can States*, 69th Congress, 1st Session, House Document No. 398, page 627 (1927), show as follows:

> Art: XII. being taken up.
>
> MR. WILSON & MR. SHERMAN moved to insert after the words "coin money" the words "nor emit bills of credit, nor make any thing but gold & silver coin a tender in payment of debts" making these prohibitions absolute, instead of making the measures allowable (as in the XIII art:) *with the consent of the Legislature of the U.S.* [Emphasis in the original]

In the finished document, as submitted by the Convention to the various States for ratification, the absolute restrictions of Article 12 became the First Clause of Article I, Section 10, here in question, while the conditional restrictions became the Second and Third Clauses of the same section.

This Court has on four separate occasions confirmed the intent of the Constitutional Convention that the restrictions in the First Clause of Article I, Section 10, are absolute.

The earliest decisions of this Court passing upon the nature of the various clauses of Article I, Section 10, concern primarily boundary disputes among the States and their proper settlement. In these cases, it was necessary for this Court to determine whether the settlement was by Agreement or Compact between the States, as allowed by the Third Clause of Article I, Section 10, with the consent of Congress; or by Treaty, Alliance, or Confederation, absolutely prohibited by the First Clause of Article I, Section 10, and void even with Congressional consent.

Justice Baldwin, in his concurring opinion in *Poole v.*

*Fleeger*, published independently and reported at 9 L. Ed. 955 (1837), stated:

> Whereas the sole power of congress in relation to such agreements or compacts, is to assent or dissent, which is the only limitation or restriction which the constitution has imposed, provided they are not treaties, alliances, or confederations, which are *absolutely prohibited* by the *first* clause of the section, and *cannot be validated by any consent of congress.* [Emphasis added]

In *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 724 (1838), this Court found:

> By the first clause of the tenth section of the first article of the constitution, there was a positive prohibition against any state entering into "any treaty, alliance, or confederation:" *no power under the government could make such an act valid, or dispense with the constitutional prohibition.* [Emphasis added]

In *Holmes v. Jennison*, 39 U.S. (14 Pet.) 540, 570 (1840), a decision split on the question of jurisdiction, Chief Justice Taney stated in his Opinion:

> The section consists of but two paragraphs; and is employed altogether in restrictions upon the powers of the states. *In the first paragraph, the limitations are absolute and unconditional*; in the second, the forbidden powers may be exercised with the consent of Congress: [Emphasis added]

In *Edwards v. Kearzey*, 96 U.S. 595, 607 (1878), a case concerning the absolute prohibition in the First Clause of Article I, Section 10, against a State passing any law impairing the obligation of contracts, this Court found as follows:

> We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under

> the safeguard of the latter. No State can invade it; *and Congress is incompetent to authorize such invasion.* Its position is impregnable, and will be so while the organic law of the nation remains as it is. [Emphasis added]

This Court has already well established the principle that the First Clause restrictions are absolute. The decision of the Washington State Court of Appeals is in conflict with this established principle. If the prohibitions in question are, in fact, not absolute, as previously determined by this Court, that decision should not be made by an unpublished decision of the Washington State Court of Appeals, but by this Court.

From the signing of the Constitution up to the time of the Civil War, there was no doubt that the proper money of the Nation, under the Constitution, was gold and silver Coin. This was amply expressed by the dictum of Chief Justice Marshall in *Sturgis v. Crowninshield,* 17 U.S. (4 Wheat.) 122, 203 (1819), "Nothing but gold and silver coin can be made a tender in payment of debts."

During the Civil War Congress made various United States notes legal tender for all debts (with certain exceptions): 12 Stat. 345; 12 Stat. 532; 12 Stat. 709. This Court held, in *Bank v. Supervisors,* 74 U.S. (7 Wall.) 26, 30 (1869), that these United States notes were payable in "coined dollars of the United States; a certain quantity in weight and fineness of gold or silver, authenticated as such by the stamp of the government, . . ."

In the *Legal Tender Cases* (*Knox v. Lee*), 79 U.S. (12 Wall.) 457 (1871) this Court upheld the Tender quality of these United States notes, basing the decision in large part on the premise that these notes were to be redeemed

in Coin, a condition that no longer exists, and upon the assumption that the Federal government was endowed with all the powers inherent in a national sovereignty.

These same United States notes having been paid in Coin,[2] reissued and still redeemable in Coin,[3] were again declared to be legal tender by this Court in *Juilliard v. Greenman*, 110 U.S. 421 (1884).

However, this Court, obviously intentionally, refrained from stating that the redeemable United States notes in question would satisfy the obligations of a State. (See the repeated references to their use by the National Government and private individuals, 110 U.S. pages 437, 438, 441, 448, 450, with no mention whatsoever approving their use by a State or its Political Subdivisions).

With the issue of the Civil War United States notes there were two types of money in circulation—these notes and gold and silver Coin. Recognizing this distinction this Court held that the obligation of a contract specifically payable in Coin could be satisfied only by the payment of Coin. *Bronson v. Rodes*, 74 U.S. (7 Wall.) 229 (1869), prior to the *Legal Tender Cases* decision, and *Trebilcock v. Wilson*,

2. *Resumption Act (Currency)* Sec. 3, 18 Stat. 296, January 14, 1875: And on and after the first day of January, anno Domini eighteen hundred and seventy-nine, the Secretary of the Treasury *shall redeem, in coin*, the United States legal-tender notes then outstanding on their presentation for redemption, at the office of the assistant treasurer of the United States in the city of New York, in sums of not less than fifty dollars. (Emphasis added).

3. *Act of May 31, 1878*, 20 Stat. 87: That from and after the passage of this act it shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal tender notes. And when any of said notes *may be redeemed* or be received into the Treasury under any law from any source whatever and shall belong to the United States, they shall not be retired, cancelled or destroyed but they shall be reissued and paid out again and kept in circulation; (Emphasis added).

79 U.S. (12 Wall.) 687 (1872), after the *Legal Tender Cases* decision.

This distinction held until Congress passed the *Joint Resolution* of June 5, 1933, 48 Stat. 112, the predecessor of, and substantially the same as, 31 U.S.C. § 392, here in question. The Constitutionality of this *Joint Resolution* was brought before this Court in the *Gold Clause Cases,* 294 U.S. (1935), and upheld in *Norman v. B. & O. R. Co.,* 294 U.S. 240 (1935), concerning railroad bonds and declared beyond the power of Congress to enact in *Perry v. United States,* 294 U.S. 330 (1935), concerning United States Government "Gold Clause" bonds.

In none of these *Gold Clause Cases* was the issue of specific performance, *i.e.* of payment in Coin, raised. All the plaintiffs requested an increased amount of paper currency to compensate for the recent devaluation of the dollar. 240 U.S. at 244, 284, 324, 337.

Thus in these decisions this Court did not consider the question of **mode** of payment—the specific question rasied in this petition. The only question considered was "how much" in paper currency.

This Court, by its own admission, thought it unnecesary in the *Gold Clause Cases* to review the Tender doctrines of the *Legal Tender* and *Juilliard* cases. 240 U.S. 302. These early cases dealt specifically with notes redeemable in gold coin, a condition which no longer exists, and with obligations of private parties, not with State obligations, as in this present case. The cases are not in point.

The doctrine of these cases, as applied by the Wash-

ington State Court of Appeals, is in direct conflict with the decisions of this Court concering the absolute nature of the restrictions in Article I, Section 10, Clause 1, when the obligations of a State or its Political Subdivisions are under consideration.

**2. The Basis of the *Legal Tender* and *Juilliard* Decisions Has Been Declared Unconstitutional By This Court in *Kansas v. Colorado***

Both the *Legal Tender* and *Juilliard* cases were decided by this Court on the assumption that the Federal government possessed all of those powers adhering to sovereignty. *Legal Tender Cases,* 79 U.S. (12 Wall.) 457, 529, 556, 582 (1871); *Juilliard v. Greenman,* 110 U.S. 421, 447, 449 (1884).

In *Kansas v. Colorado,* 206 U.S. 46 (1907), the United States attempted to intervene in an action between the two States being heard before the United States Supreme Court in original jurisdiction.

The United States based its plea for intervention on the "doctrine of inherent sovereignty," citing as authority for this doctrine *only* the *Legal Tender Cases* and *Juilliard v. Greenman.* See 206 U.S. 46, 66-69.

This Court unanimously denied the intervention of the United States in this action on the grounds that the "doctrine of inherent sovereignty" was unconstitutional as in violation of the Tenth Amendment to the United States Constitution. See 206 U.S. 46, 89.

If this "doctrine of inherent sovereignty" is, in fact, in violation of the United States Constitution, as this Court has decided, then the *Legal Tender* and *Juilliard* cases

were wrongly decided, and their application in the *Gold Clause Cases* was erroneous.

This basic conflict in decisions can be resolved only by this Court.

**3. The Question of What "Thing" a State or Its Political Subdivisions Must Tender in Payment of Debts Has Not Yet Been Decided by This Court**

This Court has established the principle that the restrictions in the First Clause of Article I, Section 10, are absolute, but has yet to directly apply this principle where the Constitutionality of a Federal Statute annulling these restrictions is brought into question.

More specifically, the adequacy of paper notes as a Tender to satisfy State obligations, even when such notes were redeemable in gold Coin, was not decided by this Court in either the *Legal Tender* or *Juilliard* cases.

The dictum of *Norman v. B. & O. R. Co.*, 294 U.S. 240, 315-316 (1935), is not sufficient. No question was raised by the parties concerning either the obligations of a State, Coin as Tender, or the absolute restrictions of Article I, Section 10, Clause 1.

Neither is *Guaranty Trust Co. of New York v. Henwood*, 307 U.S. 247 (1939), in point. Only the Fifth Amendment issue was rasied, with no consideration whatsoever of the Article I, Section 10, restrictions.

Petitioner is not aware of any decision of this Court making irredeemable fiat paper money a Tender in payment of any Debt, State or otherwise, where payment in Coin was specifically demanded.

**4. The Decision of the Washington State Court of Appeals Restricted the Prohibition on State Action in Article I, Section 10, in a Manner Not Consistent With Prior Decisions of This Court**

The Washington State Court of Appeals has held, in effect, that the prohibited State action here in question does not apply to the Agents of the State or to the State's Political Subdivisions.

This proposition was rejected by this Court, construing Article I, Section 10, in *Briscoe v. Bank of Kentucky*, 36 U.S. (11 Pet.) 257, 318 (1837), in the following words:

> A state can only act through its agents; and it would be absurd to say, that any act was not done by a state which was done by its authorized agents.

The similar wording of the Fourteenth Amendment has consistently been given the same construction by this Court, and has been held in *Chicago, Burlington and Quincy Railroad Company v. Chicago*, 166 U.S. 226, 233 (1897), to apply to "all the instrumentalities of the State, to its legislative, executive and judicial authorities"; in *McCoy v. Providence Journal Company*, 190 F.2d 760, 764 (1951), to "the actions in office of muncipal officials"; and in *Henry v. Greenville Airport Commission*, 279 F.2d 751, 753 (1960), to "Acts of a state's political subdivisions and its administrative agencies, . . ."

Of the restrictions upon the States in the First Clause of Article I, Section 10, only those in sub-clause 6 are directed specifically against the State's legislative process. It is prohibited to a State to "pass" any Bill of Attainder, ex post facto "Law", or "Law" impairing the Obligation of Contracts. None of the other restrictions are so encumber-

ed, and are thus imposed upon all agents of the State in whatever capacity they might act.

If the prohibition against State action here in question does not apply to King County and the King County Treasurer, that interpretation should come from this Court.

**5. The Implications of the Decision in This Case, Concerning Inflation and the Acceptability, as Tender, of an Unlimited Quantity of Bills of Credit Issued by the Federal Government Far Transcends the Importance to the Parties Directly Concerned, and Touches Upon the Survival of the Republic Itself**

During the Revolutionary War large quantities of irredeemable paper money, at the time referred to as "bills of credit", were issued both by the States and the Continental Congress. These issues of irredeemable paper provide one of the classic examples of **inflation,** as the term is defined in *Webster's New Twentieth Century Dictionary,* Unabridged, 2nd edition (1971):

> . . . an increase in the amount of currency in circulation, *resulting in* a relatively sharp and sudden fall in its value and *rise in prices*: it may be caused by an increase in the volume of paper money issued or of gold mined, or a relative increase in expenditures, as when the supply of goods fails to meet the demand. [Emphasis added]

Story, in his *Commentaries on the Constitution of the United States,* 3 Story 224, § 1354, (1st ed. 1833), described the situation as follows:

> At last the continental bills became of so little value, that they ceased to circulate; and in the course of the year 1780, they quietly died in the hands of their possessors. Thus were redeemed the solemn pledges of the *national* government! Thus, was a paper currency, which was declared to be equal to

> gold and silver, suffered to perish in the hands of persons *compelled* to take it; and the very enormity of the wrong made the ground of an abandonment of every attempt to redress it! [Footnotes omitted—*Emphasis added*]

Whereas the wrongs inflicted on the public by irredeemable currency during the Revolutionary War were of such magnitude as to be not subject to redress, the Constitutional Convention made every effort to see that they would not be repeated. Thus was the origin of the absolute restrictions in the First Clause of Article I, Section 10, the people's absolute Constitutional gurantee of the integrity of the medium of exchange to satisfy the obligation of contract, to the end that they could not be deprived of their property without due process of law by the institution of printing press money.

Alexander Hamilton stated in his "Report on the Subject of the Mint" (1790), *Annals of the First Congress*, Vol. 2, p. 2126:

> There is scarcely any point, in the economy of national affairs, of greater moment than the uniform preservation of the intrinsic value of the money unit. On this the security and steady value of property essentially depend.

That the American public should be again subjected to the evils of depreciating paper currency, irredeemable in gold and silver Coin, and be compelled to take such a depreciating medium even when absolutely and constitutionally prohibited shocks the conscience.

Nor has the enormity of the wrong decreased one iota from the days of the American Revolution, as is evidenced by the closing remarks of President of the United States

Gerald R. Ford in his remarks to a joint session of Congress on October 8, 1974, *Congressional Record* page H10123 in the daily edition:

> Only two of my predecessors have come in person to call upon Congress for a declaration of war, and I shall not do that. But I say to you with all sincerity that our inflation, our public enemy No. 1, will unless whipped destroy our country, our homes, our liberties, our property, and finally our national pride —as surely as any well-armed wartime enemy.

Justice Field voiced a strong dissent in *Juilliard v. Greenman*, 110 U.S. 421, 470 (1884), stating: "From the decision of the Court I see only evil likely to follow". Likewise, the dissenting Justices in the *Gold Clause Cases*, 294 U.S. 381 (1935), stated: ". . . The impending legal and moral chaos is appalling". These conditions have settled upon our country with a vengeance. The time is ripe for a complete review by this Court of the absolute nature of the restrictions of the First Clause of Article I, Section 10, of the Constitution of the United States, of the Tender Law, 31 U.S.C. § 392, as it is applied to the conditions of this case, and to the decisions of this Court cited as controlling by the Washington State Court of Appeals.

## CONCLUSION

This Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

WILLIAM W. NIENDORFF,
*Petitioner, Pro se*

## APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

WILLIAM W. NIENDORFF,
*Plaintiff,*

v.

M. J. R. WILLIAMS, King County Treasurer, and KING COUNTY,
*Defendants.*

No. 752631

Memorandum Decision

MR. WILLIAM W. NIENDORFF,
*Pro Se*

MR. CHRISTOPHER T. BAYLEY,
*Prosecuting Attorney for King County*

Plaintiff served as a juror in King County and claims that the County Treasurer must pay him for his services in gold or silver coin. He bases this claim on Article 1, § 10 of the United States Constitution which provides that, "no state shall . . . make anything but gold and silver coin a tender in payment of debts."

Both plaintiff and the prosecuting attorney, representing the treasurer, agree that the restrictions put on state action by Article 1, § 10 were motivated by the ill-fated Continental Currency issued during the Revolutionary War and never redeemed. Other restrictions on the states by § 10 of Article 1 forbid the states to coin money or emit bills of credit.

Plaintiff's argument seems to ignore another section of Article 1 of the Constitution, § 8; granting Congress the power "to coin money, regulate the value thereof, and of foreign coin." As Chief Justice Hughes stated in *Norman v. B & O. R. Co.*, 294 US 240 at 302:

> "*Second. The power of the Congress to establish a monetary system.* It is unnecessary to review the historic controversy as to the extent of this power, or

again to go over the ground traversed by the Court in reaching the conclusion that the Congress may make treasury notes legal tender in payment of debts previously contracted, as well as of those subsequently contracted, whether that authority be exercised in course of war or in time of peace. *Knox v. Lee*, 12 Wall. 457; *Julliard v. Greenman*, 110 U.S. 421."

"But the Court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency. The Court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve 'the great objects for which the government was framed.'—'a national government, with sovereign powers.' . . . The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers. *Julliard v. Greenman*, *supra*, pp. 439, 440."

"The Constitution 'was designed to provide the same currency, having a uniform legal value in all the States.' It was for that reason that the power to regulate the value of money was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States. The States cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress."

". . . as was stated in the *Julliard* case, *supra*, p. 447, the Congress is empowered 'to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the pur-

> chase of merchandise and the payment of debts, as accord with the usage of sovereign governments.' "

Pursuant to that grant of power the Congress passed 31 USC § 392 Legal Tender:

> "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national bank associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues."

The constitutionality of this statute has already been passed upon by the United States Supreme Court in *Guaranty Trust Co. of NY v. Henwood,* 307 US 247.

Interpretations of the Constitution of the United States made by the Supreme Court are binding on this court. I must, therefore, hold that the County Treasurer can pay the plaintiff in currency of the United States as defined in the above Legal Tender Act and in doing so is acting in keeping with the Constitution and statutes of the United States, that neither he nor the states has attempted by so doing to make anything a tender in payment of debts except what Congress has defined as legal tender, it having the power to regulate the currency and legal tender.

The court has in mind plaintiff's concern that inflation and the issue of unlimited bills of credit by the Federal government has and may further erode the actual value of the dollar. This has not only happened to currency here but throughout the world now and at many times in the past. Nevertheless, Congress has the constitutional power to govern and regulate the currency. He should use his undoubted talents in an effort to have Congress change or modify its policies. The King County Treasurer does not make policy but can only follow the law.

DATED this 4th day of October 1972.

ERLE W. HORSWILL
*Judge*

## APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

| | |
|---|---|
| WILLIAM W. NIENDORFF, *Plaintiff,* v. M. J. R. WILLIAMS, King County Treasurer and KING COUNTY, *Defendants.* | No. 752631 ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT |

### HEARING

I.

DATE: June 30, 1972 and September 26, 1972.

II.

APPEARANCE: Moving party appeared by its attorney, William R. Creech, Deputy Prosecuting Attorney; plaintiff appeared in person, *pro se.*

III.

PURPOSE: To consider the motion of the defendant for summary judgment.

IV.

EVIDENCE: The court considered the pleading herein.

### FINDINGS

The court, having considered the evidence and argument of counsel, finds:

I.

NO ISSUE: There is no genuine issue as to any material fact in this action.

II.

JUDGMENT: Defendant is entitled to judgment as a matter of law and Plaintiff's motion should be denied.

ORDER

On the basis of the foregoing findings,

IT IS HEREBY ORDERED that judgment be entered herein in favor of the defendant dismissing this action.

DATED this 24th day of October, 1972.

ERLE W. HORSWILL,
*Judge*

Presented by:
CHRISTOPHER T. BAYLEY
*Prosecuting Attorney*

By
WILLIAM R. CREECH
*Deputy Prosecuting Attorney*

## APPENDIX C

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | |
|---|---|
| WILLIAM W. NIENDORFF, *Appellant*, v. M. J. R. WILLIAMS, KING COUNTY TREASURER, and KING COUNTY, *Respondents.* | No. 2209-42626-I<br>Division I<br>Filed May 13, 1974 |

HOROWITZ, J.—Plaintiff, holder of a warrant issued to him and payable by the King County Treasurer for services plaintiff rendered as a juror, appeals a summary judgment of dismissal of his claim that he is entitled to payment of his warrant in gold and silver coin.

Plaintiff was issued a warrant in the sum of $186 in payment of his services as a juror. He presented the warrant to the King County Treasurer for redemption and demanded payment in gold and silver coin. The treasurer refused payment in the form demanded. Plaintiff then filed suit against the King County Treasurer and King County, Washington, seeking declaratory relief and judgment entitling him to payment in gold and silver coin. After answer, each party filed a motion for summary judgment. The court granted defendants' motion and dismissed plaintiff's complaint. Plaintiff appeals.

Defendants defend their refusal to pay the warrant in gold and silver coin on the ground that they are not required to do so under 31 U.S.C. § 392. The pertinent portion reads:

> All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.

Plaintiff contends 31 U.S.C. § 392 violates Article 1, § 10 of the United States Constitution, which reads in part:

> No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts; . . .

Defendants in turn contend that plaintiff's reliance upon Article 1, § 10 is misplaced; that Article 1, § 10 is a limitation only upon the states; that Congress does have the power to determine what shall constitute legal tender; that 31 U.S.C. § 392 is an exercise by Congress of that power, and that its exercise is binding upon the states and its subdivisions.

We agree with defendants and affirm the summary judgment of dismissal. To accept plaintiff's contention at this late date would require us to disregard *Guaranty Trust Co. v. Henwood*, 307 U.S. 247, 83 L. Ed. 1266, 59 S. Ct. 847 (1939); *Norman v. B. & O. R.R.*, 294 U.S. 240, 79 L. Ed. 885, 55 S. Ct. 407, 95 A.L.R. 1352 (1935); *Juilliard v. Greenman*, 110 U.S. 421, 28 L. Ed. 204, 4 S. Ct. 122 (1884); *Legal Tender Cases*, 79 U.S. (12 Wall.) 457, 20 L. Ed. 287 (1871).

The cases cited make it plain that the broad powers conferred upon the Congress by the United States Constitution necessarily include the power to create a national currency and to protect the strength of that currency against competitive state action which might impair the integrity and acceptability of the general currency authorized by the Congress. The literal text of Article 1, § 10 of the United States Constitution evidences the protection given by providing that "No State shall . . . *make* any Thing but gold and silver Coin a Tender in Payment of Debts . . ." (Italics ours.) That text does not forbid a state from paying public debts by using what the federal government, acting within its constitutional power, has authorized to be a legal tender.

Until changed, we are bound by the decisions of the Supreme Court of the United States construing the United States Constitution. No useful purpose would be served now by undertaking an independent and necessarily extensive review of questions already authoritatively answered.

Affirmed.

Pursuant to RCW 2.06.040, this opinion will not be published.

HOROWITZ, J.

WE CONCUR:

SWANSON, C. J.

JAMES, J.

## APPENDIX D

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | |
|---|---|
| WILLIAM W. NIENDORFF, *Appellant,* v. M. J. R. WILLIAMS, King County Treasurer and KING COUNTY, *Respondents.* | No. 2209-42626-I ORDER DENYING PETITION FOR REHEARING |

The court having considered the appellant's petition for a rehearing herein and being of the opinion that it should be denied; Now, therefore,

IT IS ORDERED that the petition be and it is hereby denied.

Dated this 22nd day of July, 1974.

By the Court:

s/HERBERT A. SWANSON
*Chief Judge*

## APPENDIX E

## IN THE SUPREME COURT OF THE STATE OF WASHINGTON

| | |
|---|---|
| WILLIAM W. NIENDORFF, *Petitioner,* v. M. J. R. WILLIAMS, *et al.*, *Respondents.* | No. 43395 (2209-42626-I) ORDER DENYING PETITION FOR REVIEW |

The Court having considered the petition for review of the decision of the Court of Appeals in this cause,

It is ordered that the petition be and it is hereby denied.

Dated this 11th day of October, 1974.

By the Court:

FRANK HALE
*Chief Justice*

11 Wn. App. 1004

## APPENDIX F

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | |
|---|---|
| WILLIAM W. NIENDORFF, *Appellant,* v. M. J. R. WILLIAMS, KING COUNTY TREASURER, and KING COUNTY, *Respondents.* | REMITTITUR No. 2209-42626-I KING COUNTY No. 752631 |

The State of Washington to: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on May 13, 1974, became the final judgment of this court in the above entitled case on October 21, 1974. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows: No cost bill having been filed, costs are deemed waived. The petition for rehearing was denied by an order dated July 22, 1974; the petition for review was denied by an order dated October 11, 1974.

cc: MR. WILLIAM W. NIENDORFF
THE HONORABLE CHRISTOPHER T. BAYLEY
*King County Prosecuting Attorney*
MR. J. RICHARD QUIRK, *Deputy*
Clerk of the Supreme Court
Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed the seal of said Court at Seattle, this 21st day of October, 1974.

RICHARD D. TAYLOR
*Clerk of the Court of Appeals, State of Washington, Division I*